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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by the Andean Commission of Jurists, a non-governmental organization in consultative status (Category II)

The Secretary-General has received the following written statement, which is distributed in accordance with Economic and Social Council resolution 1296 (XLIV).

[3 February 1993]

Enforced or involuntary disappearances in the Andean region

1. The phenomenon of enforced disappearances of persons continues to exist in the Andean region, where the cases of Colombia and Peru can be clearly seen as those with the most alarming statistics: according to reports by national human rights organizations, there were some 113 disappearances in Colombia and 280 in Peru in 1992. In both countries, the practice of this grave violation of human rights which, by virtue of its characteristics and scale, can be described as persistent in the case of Colombia and systematic in that of Peru, has been in evidence for a number of years already.

2. The situation in Venezuela is also disturbing, but there disappearances cannot be qualified as massive and systematic. However, although there is no record of any complaints of disappearances being submitted to the United Nations Working Group on Enforced or Involuntary Disappearances during

the period October 1991-September 1992, Venezuelan human rights organizations speak of a total of 14 reported disappearances, or twice as many as in the previous two years.

3. While we have drawn attention on earlier occasions to the worrying observation that the phenomenon of the detention and disappearance of persons occurs even under constitutional regimes, we must expand it to encompass the characteristics of Andean societies, which are at the basis of these violations and, more generally, are common to all Andean countries.

4. The persistence of such characteristics poses the latent danger that, in certain circumstances, this phenomenon may become recurrent in all countries in the Andean region whenever such situations occur in societies whose weak civil and political institutions have encouraged the emergence of dissident, subversive or terrorist groups which in turn leads to a response from the State centred around repression by the military and the police.

5. At the same time, it is important to emphasize that the phenomenon of the detention and disappearance of persons is linked to other kinds of human rights violations which are "traditional" in our societies, such as arbitrary detention, torture or attacks on personal integrity. Ultimately, this phenomenon is "built" on and fostered by these practices, and its development can therefore be said to constitute not the beginning but the exacerbation or worsening of violations to which the population is regularly and permanently exposed.

6. Consequently, the primary aim of policies for the prevention of the practice of detention and disappearance such as those mentioned below must be the protection of all fundamental rights, and this requires effective coordination of internal efforts and efforts by international bodies and mechanisms. With this in mind, the need to respect the freedom and personal integrity of individuals in all circumstances should be affirmed as an end in itself and a means of eliminating conditions in which the phenomenon of the detention and disappearance of persons can emerge.

7. The adoption by the United Nations General Assembly, in December 1992, of the Declaration on the Protection of All Persons from Enforced Disappearances is an important step in this direction in that, inter alia, it makes it obligatory for States to keep centralized registers of prisoners, identify their regular and official detention centres and define the powers of their authorities in respect of the lawful detention of individuals. The challenge now is to exercise permanent supervision over the actions by the States involved to put such commitments into effect.

8. With the same aim, from the standpoint of international protection systems, initiatives such as the recent establishment of the Working Group on Arbitrary Detention by the United Nations Commission on Human Rights warrant special attention. The positive experience with the work of the Working Group on Enforced or Involuntary Disappearances established by the same Commission in 1980 can provide effective guidance for the activities of the new Working Group and opens up the prospect of appropriate coordination between these international bodies that will contribute to the task of appreciably reducing

the scope for the arbitrary State conduct which serves as a basis for the practice of detention and disappearance of persons.

9. Another particularly important matter is the situation of non-governmental organizations working in the field of human rights, and more especially organizations of relatives. Given the important role that they play in efforts to curtail the phenomenon of enforced disappearances, the particularly vulnerable conditions and growing risk to which they are exposed need to be addressed. It is therefore essential for Governments and international organizations to strengthen and protect their activities.

10. To this end, it is to be hoped that the "prompt intervention" procedure recently introduced by the United Nations Working Group on Enforced or Involuntary Disappearances in order to take immediate action to safeguard the integrity and other fundamental rights of persons reporting violations or counselling victims in each country should be consistently effective in helping the organizations and persons threatened.

11. In addition, the subject of impunity should be tackled not only as a problem of justice and ethical values affecting the whole of society, but also as a serious impediment to curbing the practice of enforced disappearances and permitting the identification and tracing of the victims. The failure to characterize such acts as specific offences, or the inadequacy with which, in the case of Peru, this type of criminal offence has been addressed, having first been abolished and later re-established with serious limitations as to application, are the corollary of physical forms of impunity which demonstrate a lack of political will to punish the culprits.

12. In this connection, it is essential to go on pressing for the adoption of measures against impunity and demanding that the offence should be characterized in terms permitting practical application in concrete cases; consideration should also be given to classifying it as a crime against humanity and hence not subject to the statute of limitations, as well as to the feasibility of establishing a universal jurisdiction and making it impossibile for culprits to benefit from political asylum or refuge.

13. In this context, the conduct of the judicial administrations in each of the countries involved is especially important. The lack of independence and weakness of these judicial bodies, age-old problems which are without doubt serious impediments to the achievement of fully democratic forms of coexistence and strengthening of the rule of law among the States of the Andean region, are compounded by the specific circumstances affecting their functioning in a context of mounting violence involving systematic and repeated violations of human rights such as those which concern us here.

14. In such circumstances, there is a marked tendency to reduce the sphere of activity of the civil judicial authorities, which are superseded by police and military structures unqualified to deal with legal disputes as judicial organs.

15. In territories under the direct control of the law enforcement authorities by virtue of states of emergency, the power of the civil authorities, and particularly of judges and prosecutors, is seriously weakened

or simply non-existent. In such situations, this must be borne in mind in weighing the demands which international organizations can reasonably make of persons denouncing enforced disappearances, as far as the requirement of exhaustion of domestic remedies is concerned.

16. In any event, it is not enough for national legislation to establish protective mechanisms for use in such situations if, at the same time, there are serious obstacles to actually applying them. We often encounter difficulties undermining the operativeness of such procedures both at the legislative level and in terms of the practical aspects of their execution. For instance, in some countries such as Peru, amendments to the original law or regulations issued under it have sought to restrict access by individuals to the remedy of habeas corpus or to prolong habeas corpus proceedings.

17. In this connection, resolution 1992/35 adopted by the Commission on Human Rights at its previous session is especially important, in that it calls upon all States that have not yet done so to establish procedures such as habeas corpus to meet the situation of arrested or imprisoned persons so that the courts decide without delay on the lawfulness of the measure and order the immediate release of the person concerned in the event of arbitrary deprivation of liberty.

18. This resolution adopts a position similar to that taken by the Inter-American Court of Human Rights in its advisory opinion No. OC-8/87; and goes further by indicating that States should maintain the right to such a procedure at all times and under all circumstances, including during states of emergency.

19. To this end, efforts should be made to ensure that the legislation of every country expressly provides that this safeguard should not be subject to derogation in any circumstances, bearing in mind that at the present time none of the countries of the Andean region has legislation stipulating such non-derogability for habeas corpus or similar remedies, and that this has seemed to make such remedies ineffective where states of emergency have frequently been declared to combat subversion, terrorism or drug trafficking. This is the very situation that occurs in countries such as Colombia and Peru.

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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

Written statement submitted by the Andean Commission of Jurists, a non-governmental organization in consultative status (Category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[3 February 1993]

CIVIL DEFENCE FORCES AND INTERNAL DISPLACEMENT IN THE ANDEAN REGION

1. We wish to draw attention to two phenomena that form part of the complex situation of political violence confronting a number of countries in the Andean region in the light of the disquieting proportions which those phenomena have been acquiring in recent years. One is the emergence of civil defence groups, the formation of which appears to be on the increase worldwide, particularly in areas of conflict, as is underscored by the latest report of the Working Group on Enforced or Involuntary Disappearances. The other is the internal displacement of hundreds of thousands of individuals who flee from regions devastated by the violence and survive in subhuman conditions, usually on the fringes of towns.

2. With regard to the civil defence groups, we should point out that in Peru civil defence units, known as self-defence committees or civil defence committees, have emerged in recent years in the context of the internal war being waged in that country; they are making their presence felt increasingly in rural areas where they act on the orders of the armed forces and under the protection of legislation which promotes their formation.

3. The emergence of these civil defence groups can be explained by the difficulties experienced by the Peruvian State in guaranteeing adequate protection to the life, personal integrity and property of the civilian population established over extensive areas, especially in zones where there is a state of emergency and in which Shining Path's criminal activities constantly harass the peasant communities and cause numerous casualties among inhabitants not involved in the confilct. This same situation in effect gives rise to the large-scale exodus of these persons to the towns, creating a phenomenon of internal displacement in which they are totally without protection, since they are not eligible under the relevant conventional standards for the assistance of the Office of the United Nations High Commissioner for Refugees.

4. We should point out that Supreme Decree 07-92-DE of 11 November 1992 states that civil defence groups are organizations that have emerged "spontaneously and freely". This is not so, however, in many instances where there is obvious pressure on peasant communities to form these groups, which are issued with shotguns and which act under the supervision of the security forces.

5. In September 1990, 18 peasants, including women and children, were tortured and afterwards murdered in a joint operation carried out by these groups with the security forces in the town of Ayacucho. The mortal remains of the victims were buried in a common grave in Chillcahuaycco in an obvious attempt to conceal this horrendous crime with impunity. Despite the time that has elapsed, the perpetrators of this massacre have not been punished. The army non-commissioned officer in charge of the operation has been cleared by a military court.

6. In 1991, 174 members of self-defence committees - also known as ronderos - died; this figure increased significantly in 1992 in the course of which 260 deaths were recorded at the hands of Shining Path, frequently in retaliation for the formation of these committees. An example of this is the massacre that occurred in the community of Huayao in Ayacucho, in October 1992, when Shining Path murdered 47 peasants from that community, many of them ronderos, after burning their houses and other possessions. A few days later, Shining Path repeated its action in the neighbouring community of Rumi Rumi, where it murdered 11 ronderos.

7. However, one aspect of the activities of the civil defence forces needs to be underscored, namely, the violence which they bring to bear. In the course of 1992, these groups were responsible for the death of 76 persons, 55 of whom were members of Shining Path, 20 peasants and one a member of a civil defence group. In its most recent report, the Working Group on enforced or involuntary disappearances draws attention to the serious violations of human rights that occur when these groups participate in joint operations with the security forces.

8. Civil self-defence groups have also been implicated in disappearances. In 1991, the Working Group on Enforced or Involuntary Disappearances received nine reports of enforced disappearances attributed to civil defence groups in Peru, and although this offence continues to be perpetrated mainly by members of the security forces, self-defence groups are increasingly involved in its commission. However, as the Working Group points out in its latest report, it has also received a large number of reports concerning the disappearance of peasants as a reprisal by the military authorities for their refusal to join civil defence groups. It is obvious that in such cases the peasants are caught between two fires since, as we have pointed out, Shining Path habitually razes communities that organize self-defence committees and murders their members.

9. We cannot deny that self-defence is an inalienable right of every citizen in the face of aggression, but it must be exercised freely, without coercion of any kind and without putting at risk innocent lives in carrying out tasks which, like the maintenance of public order, the defence of life and the punishment of subversion are obligations and responsibilities of the State. The public at large should cooperate in these tasks but within its spheres of competence; otherwise, the risk is incurred of militarizing society and encouraging these armed self-defence groups to become paramilitary organizations, as occurred in Colombia with regrettable loss of human life.

10. In order to forestall abuses, and particularly the disappearances for which these groups are responsible, there must be compliance with the recommendations made by the Working Group on Enforced or Involuntary Disappearances in its most recent report; inter alia, they clearly state that the sole objective of the activities of civil defence groups must be self-defence and that, consequently, such groups should not participate in operations that would normally be carried out by army units or the police such as combat, search or arrest operations. Another recommendation, highly relevant in the case of Peru, refers to the need for membership of such groups to be genuinely voluntary, avoiding any form of coercion, real or apparent.

11. The issue is unquestionably a complex one since these civil defence groups have played an important role in combating the criminal activities of Shining Path, in the absence or inadequacy of the State apparatus in certain areas. Accordingly, the request made to the Secretary-General, in resolution 1992/57, to submit a report on domestic law and practice relating to civil defence forces and the request made in the same resolution to the special rapporteurs and working groups concerned to "pay due attention within their mandates to the matter of civil defence forces in relation to the protection of human rights and fundamental freedoms" are commendable.

12. We trust that the implementation of these and other recommendations made on the topic by the Working Group on Enforced or Involuntary Disappearances will have positive effects on the human rights situation in those areas where civil defence groups are active. We are also confident that the report to be submitted to this session will contribute to the discussion on an item which, because of its complexity and relevance for human rights, calls for urgent attention.

13. The large-scale displacement of people sparked off by the prevailing violence especially in Colombia and Peru, should also receive urgent attention. Some 30,000 displaced Colombian families have found themselves living on the fringes of various towns in the departments of Meta, Córdova, Putumayo and elsewhere, fleeing extreme violence as well as natural disasters and the acute poverty which these situations engender.

14. A similar situation is to be seen in Peru. According to figures drawn up by human rights organizations, some 60,000 families have fled the areas of conflict, especially the mountainous area in the centre and south of the country as well as the central forest region, where the traditional life-styles of the Ashaninka people have been destroyed, forcing them to live in improvised encampments exposed to epidemics and in conditions of malnutrition. Large numbers of displaced persons have moved to the outskirts of Lima and other towns where they not only live in extremely difficult circumstances but also have to cope with the effects of the collapse of their traditional way of life.

15. In the context of the acute economic crisis affecting Peru, the displaced persons are the poorest of the poor but, in addition, they are particularly vulnerable; since many of them do not have papers, they are habitually subjected to unending abuses and arbitrary detention.

16. Despite the seriousness of the problem, thus far States have not developed any kind of programme to offer protection and humanitarian assistance to these families who are living in conditions of absolute poverty and extreme social vulnerability. The efforts and resources devoted to them by the non-governmental organizations are totally inadequate to cope with a phenomenon of this magnitude. It is imperative therefore, for the international community to establish appropriate legislation, machinery and programmes of protection and assistance, since we are in the presence of an alarming situation of human rights violation which is ignored by the United Nations system as a result of conventional limitations.

17. As long as work on the possible application of the existing international standards on human rights, humanitarian law and refugee law to internally displaced persons is going ahead, it is necessary, as Commission on Human Rights resolution 1992/73 recognizes, to provide them with emergency relief and protection. Until such time as this international protection becomes a reality, the international community must promote, and States must adopt internal measures on behalf of those persons who are displaced within their territories as a result of the conflicts of political violence occurring in them, establishing assistance programmes that bring the living conditions of these families up to minimum humane levels.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the Andean Commission of Jurists, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[3 February 1993]

Political violence and summary or arbitrary executions in the Andean region

1. The return of constitutional regimes in the Andean region, which began in the 1980s and the hopes this raised for the consolidation of democracy in our region suffered a serious setback in 1992 with the destruction of the constitutional regime in Peru and the attempts to destabilize the constitutional regime in Venezuela.

2. This process, which is undoubtedly a positive and essential step towards strengthening regional democracy, has proved to be neither irreversible nor sufficient to guarantee the full realization of human rights. The continued occurrence of serious violations of these rights in Colombia, under a constitutional regime, and in Peru, under the aegis of a de facto regime, demonstrates that arbitrary behaviour leading to the violation of human rights still persists in the face of the fragility and ineffectiveness of most of the institutions responsible for their protection.

3. In Colombia, political violence and the practice of summary or arbitrary executions continue to cut short the lives of thousands every year. In the first half of 1992 alone, 2,051 persons lost their lives for political or ideological reasons. Sixty-four per cent of the cases in which the perpetrator or the motive was identified were attributable to State agents, 22 per cent to the guerrillas, 12 per cent to paramilitary groups and 2 per cent to individuals.

4. The situation in that country is not only serious but is extremely complex because of the variety of violent players involved in it. Even though the violence caused by drug-trafficking has decreased, the process of peacemaking - which has enabled four subversive organizations to be reintegrated into civilian life - has suffered a severe setback as a result of the indefinite suspension of the talks between the Government and the Simon Bolivar Guerrilla Coordinating Body, and the increase in this organization's sabotage activities, which are causing even greater deterioration of the living conditions of the population and making it more difficult to reach a peaceful solution to the armed confrontation.

5. In Peru, the situation continues to be serious and is even more disturbing than previously. Since the destruction of the constitutional regime in April 1992, unconstitutional laws have permitted violations of, inter alia, the right to personal freedom and security of person, the right of defence, the right not to be held incommunicado, the right of due process, the right to freedom of opinion, job security and social security and the right of effective recourse to the courts for the protection of fundamental rights (habeas corpus and amparo). There have also been numerous cases of blatant political persecution, which in some instances have forced the persons concerned to seek asylum or refuge. In short, this legislation has been restricting an increasingly broad range of civil and political rights and also economic and social rights, thereby strengthening the bases of political violence in Peru.

6. From 1980 to the present, the violence unleashed by the subversive groups in Peru, particularly Sendero Luminoso (Shining Path), and the Government's response to that violence have caused over 28,000 deaths. In 1992 there were 3,101 deaths, 1,677 of which were attributable to Sendero Luminoso. An average of nine deaths a day is a terrible figure as it constitutes a significant increase over the average recorded during previous periods of government. More than 45 per cent of the deaths through political violence in 1992 were among the civilian population; this shows the limited extent to which in Peru today the basic standards of international humanitarian law are complied with.

7. However, although Sendero Luminoso is largely responsible for these deaths and violates the fundamental norms of humanity through its criminal activity, this cannot legitimize or justify a governmental response to insurgency which violates the most elementary rights. According to the Peruvian human rights organizations, between January and November 1992 there were 104 summary or arbitrary executions and 53 murders attributable to paramilitary groups.

8. Moreover, we cannot but express our deep concern over the disappearance of 31 students from the Universidad del Centro in the city of Huancayo, and the subsequent discovery of the bodies of 23 of them with visible signs of torture. At about the same time, 12 students disappeared from the Enrique Guzman y Valle University in the city of Lima. Two of them reappeared but, given the time which has elapsed since their disappearance in July 1992, we fear for the lives of the remaining 10 who, like the students from Huancayo, have very probably been executed.

9. Summary or arbitrary executions, as stated in the first reports of the Special Rapporteur, usually occur within the framework of internal armed conflicts, as demonstrated by the cases of Colombia and Peru in the Andean region, but they are also a result of the use of excessive force in maintaining law and order and quelling popular protests, and in reprisals for abortive coups and even crackdowns on ordinary crime. Unfortunately, all these situations are now occurring in some countries of the region.

10. In Venezuela, where the human rights organizations have recorded a marked increase in the violations of the right to life by State agents, 35 persons died between October 1991 and September 1992 because of the excessive use of force; 19 of these deaths occurred in the repression of student or popular demonstrations. During the same period, the indiscriminate use of force in operations against ordinary crimes led to the death of 19 innocent persons, several of whom were children. Recently, in November 1992, several persons were executed as part of the climate of violence which was unleashed in connection with the most recent attempted military coup. On that occasion, scores of prisoners taking advantage of the prevailing confusion, rioted and attempted to escape from a prison but died because of the excessive and indiscriminate force used in putting down that disturbance.

11. In Peru in May 1992, a riot by prisoners accused of belonging to Sendero Luminoso was put down with a loss of at least 50 lives, although the relatives of the prisoners, claim that 101 died. The Peruvian Government reported the deaths of only 28 of the Sendero Luminoso prisoners.

12. In societies where violence has reached such alarming levels that human life and dignity lose their value, the State is duty bound to use its best efforts to guarantee the realization of the human rights of all its citizens by adopting preventive measures and punishing all who violate them, in order to prevent impunity from becoming an element that breeds further violence.

13. Consequently, it is very disturbing that the violations of human rights in the Andean region usually go unpunished. In Venezuela, the demand for justice by the many victims of the popular protest which took place in 1989, known as the "Caracazo", has remained unanswered, and the same is true of the massacre of 14 fishermen at El Amparo in 1989. Both cases are being handled by the military courts, although the victims were civilians, the acts in question were ordinary crimes and many of those presumed to be guilty were police officers and were therefore subject to the jurisdiction of the civil courts.

14. In Bolivia, a judgement is still pending in the trial of the former dictator Garcia Meza and 56 officials of his Government; the trial started in

1986, in the ordinary courts. They are accused of many offences, including the organization of armed irregular groups and the assasination of political leaders.

15. In Ecuador, there is concern that the disappearance of the Restrepo brothers, which occurred in 1988 and is being investigated by an international commission, may go unpunished. The person primarily responsible, General Gilberto Molina, former Chief of the Ecuadorian police escaped in October 1992 from the police establishment where he was being held by order of the Supreme Court.

16. But it is in Peru that impunity has assumed its most terrifying proportions. Serious and massive violations of human rights continue to go unpunished. Although this has for many years been one of the countries where there has been the largest number of enforced disappearances in the world, not one member of the security forces has been sentenced for this crime.

17. Since impunity creates a loss of confidence in the administration of justice and constitutes an affront to the victims and their families and to the moral conscience of society, it is imperative that a situation legitimizing behaviour which violates civilized human co-existence should be reversed.

18. Furthermore, the mechanisms of impunity which operate in favour of the perpetrators of these crimes make it difficult to halt the practices which violate human rights, by preventing clarification of the facts and the pursuit of preventive policies. Because of the gravity of the situation in Peru, it is essential that the Special Rapporteur on extrajudicial, summary or arbitrary executions should visit the country without delay and verify on the spot the serious violations of human rights which fall within his mandate and are being committed there. We trust that his visit will contribute to the implementation of the recommendations made to Governments by the Special Rapporteur in his report submitted to the Commission at its previous session, in particular that any allegations concerning summary executions should be investigated rigourously and that the responsible parties should be prosecuted without delay by an independent and impartial tribunal; that national law and practice should be reviewed in order to ensure compatibility with international human rights standards; and that appropriate training should be given to law-enforcement, judicial, correctional and military personnel.

19. It should also be impressed upon the Governments of the countries confronted with internal armed conflict that they should cooperate fully with the International Committee of the Red Cross, especially Peru, where this important humanitarian organization is facing constraints in carrying out its altruistic work.

20. The events which occurred in 1992 in prisons in Peru and Venezuela, which ended in a regrettably large number of deaths among the prisoners together with the subhuman conditions in which prisoners live in most of the Andean countries, make it clear that another of the important recommendations made by the Special Rapporteur, should be urgently implemented, namely, that Governments should take all necessary measures to ensure the rapid and complete elimination of unnatural deaths in custody, whether due to torture,

excessive use of force in controlling prisoners, or lack of minimally adequate nutrition, sanitation and health care.

21. Lastly, under this item, we must stress the need to continue giving due attention to the extensive and serious violations of rights, under constitutional regimes, because of the particular form such violations may take, as borne out by the cases of Colombia and Venezuela and, up to April 1992, Peru. To that end, it is obvious that in the case of Peru the recent inauguration of the so-called democratic Constituent Congress does not in itself establish a sufficient guarantee that the present situation described above as regards the serious violations of civil rights will be reversed; this calls for close attention by the international community, within the framework of resolution 1992/12 adopted on 27 August 1992 by the Sub-Commission on Prevention of Discrimination and Protection of Minorities entitled "Support for the restoration of democracy in Peru".

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RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC,
RELIGIOUS AND LINGUISTIC MINORITIES

Written statement submitted by the Andean Commission of Jurists,
a non-governmental organization in consultative status
(category II)

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[3 February 1993]

INDIGENOUS PEOPLES IN THE ANDEAN REGION

1. The Andean Commission of Jurists, a non-governmental organization of the Andean region, considers the declaration of 1993 as the "International Year for the World's Indigenous People" to be particularly important and welcomes the special ceremony held during the recent celebration of Human Rights Day as a sign of what the World Conference on Human Rights to be held in Vienna in June 1993 will be, namely, a new forum for the discussion of the rights of the world's indigenous peoples.

2. Indigenous peoples account for an average of 30 per cent of the population of the countries of the Andean region. In 1990, over 20 million inhabitants of the region were in that situation: in Bolivia, 71 per cent of the population is indigenous, in Peru, 47 per cent and, in Ecuador, 43 per cent. These three countries together have an indigenous population which accounts for more than 50 per cent of their combined total populations. According to the same estimates, there are 1 million indigenous persons in Chile, 600,000 in Colombia and 400,000 in Venezuela. The concept of

minorities that is used in the United Nations is thus entirely relative compared to the actual situation of the indigenous peoples of the Andean region, where 17.3 million live in the Andes and 2.7 million are settled in the Amazon.

3. Indigenous peoples are present not only in the rural, farming and forestry sectors that are associated socially and economically with greater poverty and a lower standard of living, but also in the main cities, where their potential for hard work and their cultural activities keep them under constant threat owing to the distortions and violence of political, economic and social life. In view of this situation, the process of recognizing the indigenous peoples' worth must not be left to depend on the good will of Governments.

4. Efforts have to be made to determine and define what is meant by the term "indigenous", which must be distinguished from the term "ethnic minority" (the subject-matter of the work of the Working Group on Indigenous Populations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities) with a view to promoting a special permanent regime based on their cultural and social characteristics. We are advocating this because it is required by the population's level of development and its relationship to the domestic market. Ethnic and cultural configurations have nevertheless been strengthened and indigenous organizations were consolidated when recognition of their rights was made a prerequisite for their physical and spiritual existence.

5. Existing national models are in crisis and have outgrown their institutions because they have not recognized unity within diversity. There has to be a change from the prevailing normative and factual framework of attitudes and practices on which the organization of States is now based to systems that genuinely guarantee participation in the solution of the problems affecting them.

6. The promotion and consolidation of the trends that form the core of the claims of the indigenous peoples of the Andean region, whether in the Andes or in the Amazon, may well start with the ratification of International Labour Organisation Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. In our view, States must confirm these assumptions in the following areas of their relationship with indigenous peoples:

(a) Constitutional recognition of their existence as specific subjects within each State; recognition of the collective rights to which they are specifically entitled; establishment of the obligations of States and Governments to guarantee the exercise of these rights by drafting and adopting the relevant legislation through recognition of the right of peoples to the physical and cultural means for their reproduction and growth; the right to land and territory and sharing the benefits of the development of natural resources, through guarantees of an individual and collective land ownership system. What indigenous peoples are claiming is not territorial secession, but autonomy, which will guarantee them their right to material and social development that is to be promoted directly and responsibly by their organizations and technical experts, with the necessary support from the State;

(b) The creation of legal and political conditions within State institutions, thus establishing communication through direct representation in order to secure the historical achievements that are being threatened by policies of a definitely liberal stripe; efforts to legitimate their own forms of authority and representation in various spheres of political and social activity in order to strengthen their right to their own culture and its development. This means changing educational models by including their technological and medicinal contributions, as well as their experience of production and nature conservation, as in the Convention on Biological Diversity, which is the result of the negotiations at the United Nations Conference on Environment and Development and the approved text of which is in the process of being ratified;

(c) Organizations of indigenous peoples must be recognized, as must their ability to establish a dialogue with the State, businesses and professional associations. In this way, their political participation in the direct management of their development proposals will be broadened, as will their potential to make a social contribution to the building of States and institutions suited to each particular situation. Otherwise, despite the existence of formal constitutional and democratic regimes, the stability required by any truly democratic State subject to the rule of law will not be achieved.

7. Measures must be taken to ensure that, in the countries of the region, promising developments in these areas actually take shape. Examples of recognition of the existence of this cultural, social and legal plurality include the 1991 Constitution of Colombia, which "recognizes and protects the ethnic and cultural diversity of the Colombian nation"; the commendable effort made by the Government of Chile in establishing the Special Commission on Indigenous Peoples (CEPI) and sponsoring an indigenous bill and a draft constitutional amendment. The Government of Bolivia has also followed this trend by ratifying ILO Convention No. 169, thereby making it easier to amend its relevant legislation, for, as in Ecuador, major indigenous mobilizations have been calling for new treatment and consideration of their rights also based, on proposed legislative and constitutional amendments.

8. The establishment of a Special Indigenous Prosecutor's Office in Venezuela is a positive step and forms part of an open period of discussion in which the indigenous movement drafted a proposed constitutional amendment which has been and is still under consideration by the Venezuelan Parliament. In Peru, proposed amendments and basic changes have been hampered by the crisis that affects the country and the ratification of ILO Convention No. 169 has been pending in the Council of Ministers since May 1992.

9. Attention is also drawn to normative proposals that have been made at the regional and international levels. The Draft Universal Declaration on Indigenous Peoples, which has been entrusted to the Working Group on Indigenous Populations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and the regional instrument of a similar nature that is being prepared by the Organization of American States cannot be drafted without considerable indigenous participation, much less rescind already recognized rights. In addition to these international efforts, there are those aimed at the sustainable development of indigenous peoples, such as

the Indigenous Fund and the Convention on Biological Diversity. All these efforts must be fully guaranteed because there are threats against acquired rights and even those historically claimed by the indigenous peoples.

10. There are also regional development plans in connection with various State legislative policies that are genuine opportunities for sales of land and natural resources. Many of these proposals disregard rights acquired by the different indigenous communities. "Eminent domain" is invoked for this purpose and priority is given to mining and transnational macroprojects, as though land occupied by indigenous peoples was "no man's land". There are political and territorial measures that will not change the basic problems, which are not taken into account by development projects and include soil degradation and wasted or polluted fresh water reserves and sources.

11. The fact that indigenous peoples have so far not been able to take part in the formulation of the policies and provisions that apply to them and, consequently, in the solution of the problems that affect them is an obvious violation of the right to participation to which they are entitled not only as individuals, but also as peoples, bearing in mind, in the latter case, the limits set by international law for the purpose of guaranteeing the integrity of States.

12. It must also be pointed out that, in countries affected by serious political violence, such as Colombia and Peru, indigenous peoples are one of the sectors most affected by the violence because of their social marginalization and the fact that they usually live in areas where subversive groups and drug traffickers focus their activities.

13. Of particular concern is the case of the Ashaninka people in Peru, which is constantly being harassed by Sendero Luminoso (Shining Path), which has killed hundreds of members of this ethnic group and forced them to abandon their land and take refuge in improvised camps where they not only live in extreme poverty, but also have to cope with the problem of being uprooted from their traditional way of life.

14. The constant struggle of indigenous peoples to defend their rights and preserve their cultural identity was given well-deserved recognition when the Nobel Peace Prize was awarded to Rigoberta Menchú, a Quiché Indian from Guatemala. That was also an appeal to the international conscience concerning the responsibility of all for the realization of the fundamental rights of indigenous peoples.

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ORGANIZATION OF THE WORK OF THE SESSION

Written statement submitted by the Lawyers Committee for Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is distributed in accordance with Economic and Social Council resolution 1296 (XLIV).

[27 January 1993]

THE SITUATION OF HUMAN RIGHTS IN GUATEMALA

1. The Lawyers Committee for Human Rights believes that the situation of human rights in Guatemala warrants additional scrutiny by the Commission for Human Rights. Guatemala continues to present a consistent pattern of gross violations of human rights. For this reason, we again urge the Commission to return the situation of human rights in Guatemala to agenda item 12 rather than placing it under item 21, Advisory services.

2. As the Lawyers Committee has suggested at previous sessions of the Commission, the decision to discontinue the mandate of the Special Rapporteur for human rights in Guatemala was, in our view, premature, coming on the heels of Guatemala's first election of a civilian President in more than 30 years. While the Lawyers Committee is gratified to note that Guatemala has recently marked seven years of civilian rule, events in that period have only confirmed that judgement.

3. Despite an overall decrease during 1992 in documented violations of human rights in comparison with the prior year, the state of human rights in Guatemala reflects little institutionalized improvement. Acts against particular sectors, such as the media and the human rights community, continue unabated. For instance, the daily newspaper Siglo Veintiuno has been the target of numerous incidents. In July, Siglo Veintiuno correspondent Omar Cano was beaten, tortured and nearly killed by the army in the Petén region. Mr. Cano had been investigating illicit military trafficking in lumber. Prior to that, in July, the paper's editorial board received death threats; later some 6,000 copies of the newspaper were burned in several sites in Guatemala City.

4. Perhaps most significant, the dim prospects for justice in human rights cases remain virtually unchanged since the end of military rule. Two successive civilian administrations have been unable to wrest from the military its illegitimate prerogatives, including a de facto veto over the justice system.

Murder of anthropologist Myrna Mack

5. Military impunity for human rights violations remains the rule, subject to isolated and costly exceptions. In the case of anthropologist Myrna Mack, murdered in September 1990, the efforts of her family, the human rights office of the Archdiocese of Guatemala City, and a host of human rights groups outside of Guatemala have ensured that the investigation was carried forward and that a defendant, Noel de Jesús Beteta, a former member of the Presidential security force within the Ministry of Defence, was brought to trial. While a verdict is not yet forthcoming more than 2½ years after the killing, holding the trial itself represents a nearly unique accomplishment.

6. However, the price of these achievements highlights the dimensions of the obstacles to justice. Despite civilian rule, it appears to require an international outcry to prosecute military personnel for human rights violations. Without the extraordinary determination of her sister Helen Mack, and the pressure exerted through the efforts of domestic and international human rights groups, the case against Beteta might never have gone forward. No less than 12 different courts have handled the case, many of them clearly demonstrating a desire to avoid responsibility for the investigation or trial. And the police investigator in charge of this case, José Mérida Escobar - whose report implicating the defendant was initially covered up - was murdered shortly after ratifying his report in court. The investigation of his murder is a frightening reprise of what transpired in the Myrna Mack investigation: the release of a second, altered, police report, with certain suspects having been edited out.

7. Mérida Escobar's death, which is still unsolved, reminds those responsible for upholding justice that to confront elements of military power in Guatemala is to invite deadly reprisal. This message was not lost on his police partner on the case. He abandoned the investigation and fled the country shortly after Mérida was murdered.

8. More recently, an important new witness in the case has been the subject of intimidation in the days leading up to his testimony in court. On 23 January, armed men fired shots into the front of the home of Juan Carlos Marroquin Tejada, an eyewitness to the killing who recently came forward. The next day, Marroquin, and his cousin, José Arnoldo Tejada who was also near the scene of the crime, each received written death threats from a group identifying itself as "the Jackson gang". These warned the men against testifying, saying that by giving their testimony, they would be "selling their lives".

9. Weeks earlier, armed men in military uniforms forced their way into the offices of the Institute for the Advancement of the Social Sciences (Instituto para el Avance de las Ciencias Sociales) (AVANCSO), where Myrna Mack worked before her murder. They threatened the watchman with death, causing him to quit his job shortly thereafter.

10. Despite evidence from several sources suggesting that Beteta, then a low-ranking active duty soldier, acted with others in a premeditated military operation, no judicial investigation has been opened to probe the possible involvement of military officers in the murders of Myrna Mack or José Mérida Escobar. To date, no Guatemalan military officer has been convicted of a human rights violation. In hundreds, if not thousands, of additional cases which have not achieved the notoriety of the Mack murder, the chances of mounting a meaningful investigation or prosecution of military personnel remain virtually nil.

Treatment of human rights organizations

11. In this context, Guatemalan human rights groups continue to monitor and publicize human rights violations and denounce those believed to be responsible, in the hope of holding them accountable. The Guatemalan army has responded with renewed efforts to discredit such organizations. Especially troubling about these developments is President Serrano's active and public support of the military's actions.

12. In recent months, Ronald Ocheata of the Archdiocese human rights office, Amílcar Méndez of CERJ (Council of Ethnic Communities Runajel Junam), Factor Méndez of CIEPRODH (Centre for Investigation, Study and Promotion of Human Rights) and David Holiday of Americas Watch have all been targeted in government statements which directly or indirectly implicated them in Guatemala's armed insurgency. The number and frequency of such accusations leaves little room for doubt that they reflect a deliberate campaign to intimidate the human rights movement. For Guatemala's people, the impact of these actions is to discourage reporting of human rights violations to groups publicly tainted by Guatemala's highest military and civilian officials.

13. President Serrano's role in these denunciations undermines his self-proclaimed commitment to human rights and against military impunity. He publicly and unconditionally supported the charge by Defence Minister José Domingo García Samayoa that Ronald Ocheata and both Amílcar and Factor Méndez were "clear instruments of subversive groups".

14. President Serrano added that the Archdiocese human rights office obstructed justice by the efforts to help Maritza Urrutia, victim of an alleged kidnapping by security forces, to obtain a visa from the United States Government. Serrano alleged that Ocheata removed the potential complaining witness from the jurisdiction, preventing her from testifying, presumably in a prosecution of her alleged captors. This charge is patently unfounded, since no prosecution was then or is now under way. Efforts to help Ms. Urrutia obtain a visa, which was granted by the Government of the United States on the basis of her allegations, cannot in any event be classified as obstructing justice. No legal action has been initiated by the Guatemalan Government in the wake of these accusations.

15. Amílcar Méndez is currently being prosecuted for terrorism and other alleged crimes, although several circumstances point to evidence tainted by severe police misconduct. According to the office of Guatemala's Human Rights Ombudsman, the two witnesses against Méndez were mistreated in order to coerce an accusation that Méndez had attempted to recruit them for the guerrilla movement. In fact, one of the witnesses subsequently recanted his accusation.

16. In late December, Defence Minister General José Domingo García Samayoa held a press conference in which he disclosed confiscated correspondence referring to contact between Americas Watch and persons the army alleges are guerrillas. Although the army subsequently gave assurances that General Samayoa had not intended to accuse the group or its representative of ties to the guerrillas, the prevailing view among the local and international media was that the Defence Ministry had in fact made such an allegation.

Recommendations

17. International pressure to convince the Guatemalan Government that its own interests are best served when it defends and protects the human rights of its people is essential. Guatemala's military, and others, must not be able to depend on the existence of an elected government to stay international action in the face of persistent and widespread abuses of human rights.

18. The Lawyers Committee urges the Commission on Human Rights to recognize that the measures taken to date are simply insufficient to address the fundamental problem of impunity and the generalized climate of fear and instability which it creates among the population of Guatemala. Accordingly, the Lawyers Committee once again asks the Commission to condemn unequivocally human rights violations by the armed forces, as well as acts of intimidation against the human rights movement, and to name a Special Rapporteur to monitor the situation of human rights and fundamental freedoms in Guatemala.

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ORGANIZATION OF THE WORK OF THE SESSION

Written statement submitted by the Lawyers Committee for Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is distributed in accordance with Economic and Social Council resolution 1296 (XLIV).

[29 January 1993]

THE SITUATION OF HUMAN RIGHTS IN EL SALVADOR

1. For the people of El Salvador, 1992 marked their first year without warfare in more than a decade. The cease-fire achieved in February 1992 was a significant milestone in the search for peace and the establishment of a society capable of ensuring the basic human rights of its citizens and of holding violators accountable.

2. As the Commission gathers in Geneva, the Salvadorian peace process is at a critical juncture. On 7 January, Secretary-General Boutros Boutros-Ghali informed the Security Council that President Cristiani had failed to comply in full with the findings of the so-called Ad Hoc Commission mandated by the peace accords to make recommendations concerning the "purification" (depuración) of the armed forces. This Commission had recommended the dismissal or transfer of 103 officers deemed unsuitable to serve in a peace-time army under civilian rule. By late January, the Cristiani government still had not complied with the Commission's findings. In mid-February, a "Truth Commission" of foreign human rights professionals will release the results of its six-month study of acts of violence committed over the last decade by both sides in the civil conflict.

3. In the view of Lawyers Committee for Human Rights, the Salvadorian peace process, which has been successfully and expertly nurtured by the United Nations and, in particular, the office of the Secretary-General, remains fragile and in need of international vigilance. The Salvadorian Government's current unwillingness to comply fully with negotiated agreements concerning military personnel demonstrates the fragility of civilian authority over military power.

4. This is highlighted by the continuing serious human rights violations occurring in El Salvador. Moreover, the nation's justice system showed no improvement in its ability to provide due process. The shortcomings of the judicial system have been repeatedly highlighted in reports by the United Nations Observer Mission in El Salvador (ONUSAL) human rights division and most recently in the 13 November 1992 report of the Independent Expert of the Commission on Human Rights, Professor Pedro Nikken (A/47/596). Nor has any progress been made in establishing a new independent criminal investigatory body. El Salvador's lack of professional investigative capacity remains a serious obstacle to justice in El Salvador. Likewise, establishment of the new National Civilian Police has been seriously delayed and hampered by lack of resources.

5. The Lawyers Committee would also like to draw attention to the Independent Expert's view that the criminal investigative unit known as the SIU (Comisión de Investigación de Hechos Delictivos) should be abolished. This unit has been staffed by active duty members of the Salvadorian Armed Forces, seriously compromising its independence. The Independent Expert observed that "This Commission, although it seems to have very modern equipment obtained through international cooperation, has been able to solve hardly any of the shocking crimes which caused a public outcry and involved a serious violation of human rights. [...] As a result, the Criminal Investigation Commission has been perceived in some quarters as one of the causes, by reason of its lack of results at least, of the impunity with which violations of human rights have been committed". (A/47/596, para.146).

6. The absence of functioning institutions to guarantee fundamental rights, and to properly redress abuses when they do occur, precludes, in our view, any significant measure of confidence in the Government's will or capacity to respect human rights. Over the years the number of human rights abuses in El Salvador has fallen, only to climb again.

7. Scrutiny by ONUSAL and the Independent Expert have undeniably had a positive effect on compliance with human rights norms. Both institutions remain necessary to convey the importance which the international community attaches to El Salvador's successful transition to peace. For this reason, it is essential to strengthen the capacity of rights monitors at a moment when compliance with the peace accords and improvement in the human rights situation fundamentally depend on international scrutiny.

8. In this regard, we are mindful of the experience of Guatemala. After the election of a civilian President, Vinicio Cerezo, in 1985, the mandate of the Special Rapporteur was, in our view, prematurely discontinued. However, the installation of a civilian government was followed by deterioration in the

human rights situation and a near-total government unwillingness and inability to respond to widespread military human rights violations.

9. In this context, we offer the Commission on Human Rights the following observations and recommendations:

1. To continue the consideration of El Salvador under item 12 and to renew the mandate, as currently defined, of the Independent Expert.

2. To call on the Government of El Salvador to implement recommendations made by the ONUSAL human rights verification mission and the Independent Expert.

3. To encourage the dissolution of the SIU (Comisión de Investigación de Hechos Delictivos), while dedicating resources to help establish a civilian criminal investigative unit within the National Civilian Police to be housed at the Attorney General's office (Fiscalía), as provided for by the peace accord.

4. To monitor the follow-up and implementation of the findings and recommendations contained in the "Truth Commission" report.

5. To call on the Cristiani government to fully implement the findings of the Ad Hoc Commission, and in particular, to call on his government to continue the work of the Truth Commission so that a full accounting may be made of acts of violence by both sides to the civil conflict.

6. To encourage El Salvador's new Human Rights Ombudsman's Office (Procuraduría para la Defensa de los Derechos Humanos) to work closely with the ONUSAL human rights division with the aim of training the Ombudsman's staff to assume the monitoring and reporting functions currently conducted by members of the ONUSAL mission.

7. To call on the Cristiani government to renew the investigation of the murders of six Jesuit priests and two women at the Central American University José Simeón Cañas in November 1989. While the September 1991 conviction of two army officers involved in the killings represents a significant blow to impunity, those who masterminded the murder plot have not yet been identified. The Lawyers Committee continues to view the UCA murders as a key case and believes that all those involved must stand trial.